

78B-4-504 Donation of nonschedule drugs or devices -- Liability limitation.

- (1) As used in this section:
 - (a) "Administer" is as defined in Section 58-17b-102.
 - (b) "Dispense" is as defined in Section 58-17b-102.
 - (c) "Distribute" is as defined in Section 58-17b-102.
 - (d) "Drug outlet" means:
 - (i) a pharmacy or pharmaceutical facility as defined in Section 58-17b-102; or
 - (ii) a person with the authority to engage in the dispensing, delivering, manufacturing, or wholesaling of prescription drugs or devices outside of the state under the law of the jurisdiction in which the person operates.
 - (e) "Health care provider" means:
 - (i) a person who is a health care provider, as defined in Section 78B-3-403, with the authority under Title 58, Occupations and Professions, to prescribe, dispense, or administer prescription drugs or devices; or
 - (ii) a person outside of the state with the authority to prescribe, dispense, or administer prescription drugs or devices under the law of the jurisdiction in which the person practices.
 - (f) "Nonschedule drug or device" means:
 - (i) a prescription drug or device, as defined in Section 58-17b-102, except that it does not include controlled substances, as defined in Section 58-37-2; or
 - (ii) a nonprescription drug, as defined in Section 58-17b-102.
 - (g) "Prescription drug or device" is as defined in Section 58-17b-102.
- (2) A drug outlet is not subject to civil liability for an injury or death resulting from the defective condition of a nonschedule drug or device that the drug outlet distributes at no charge, in good faith, and for a charitable purpose to a drug outlet or health care provider for ultimate use by a needy person, provided that:
 - (a) the drug outlet complies with applicable state and federal laws regarding the storage, handling, and distribution of the nonschedule drug or device; and
 - (b) the injury or death is not the result of any act or omission of the drug outlet that constitutes gross negligence, recklessness, or intentional misconduct.
- (3) A health care provider is not subject to civil liability for an injury or death resulting from the defective condition of a nonschedule drug or device that the health care provider distributes to a drug outlet or health care provider for ultimate use by a needy person or directly administers, dispenses, or distributes to a needy person, provided that:
 - (a) the health care provider complies with applicable state and federal laws regarding the storage, handling, distribution, dispensing, and administration of the nonschedule drug or device;
 - (b) the injury or death is not the result of any act or omission of the health care provider that constitutes gross negligence, recklessness, or intentional misconduct; and
 - (c) in the event that the health care provider directly administers, distributes, or dispenses the nonschedule drug or device to the needy person, the health care provider has retained a consent form signed by the needy person that explains the provisions of this section which extend liability protection for charitable donations of nonschedule drugs and devices.
- (4) Nothing in this section may be construed as:
 - (a) permitting a person who is not authorized under Title 58, Occupations and Professions, to operate as a drug outlet or practice as a health care provider within the state; or
 - (b) extending liability protection to any person who acts outside of the scope of authority granted to that person under the laws of this state or the jurisdiction in which the person operates or practices.

Renumbered and Amended by Chapter 3, 2008 General Session